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a new trespass on the actual possession of the true owner — which *ex hypothesi* has terminated. The analogy drawn from decisions like the principal case where the goods are carried from county to county is a mistaken one. There the thief can be punished but once. It is really a rule of convenience. If the palpable fiction of continuing trespass be adopted to its full extent, and the defendant make a tour with the stolen property through every State in the Union, there is nothing but death to prevent his retracing his steps in a series of imprisonments.

THE DEFENCES OF A SURETY. — If a creditor gives the principal debtor time for payment the surety is injured because he is deprived of his undoubted right to pay the debt at maturity, and at once sue the principal in the creditor's name. The occasions when this injury will constitute a defence to a suit by the creditor have caused much discussion. In the recent case of *Grier v. Flitcraft*, 41 Atl. Rep. 425 (N. J. Ch.), a surety and his principal had signed a note as joint and several makers. The note itself did not disclose that the relation of suretyship existed, but the payee took the note with notice that this relation did exist. The surety filed a bill to have the collection of the note enjoined because the payee had given time to the principal debtor. The payee claimed that this action could be pleaded as a defence to a suit at law, and that therefore equity had no jurisdiction. The court held they had jurisdiction, reasoning substantially as follows: The creditor took the note with notice that the complainant was only a surety. By so taking it he impliedly agreed to respect the complainant's rights as surety, and contracted not to impair his remedies against the principal. Unless, then, the face of the note disclosed the fact that the relation of suretyship existed, this contract could not be proved at law, for the terms of a specialty cannot be altered by parol. Accordingly it was proper for the surety to seek the aid of equity.

It may be true that equity has a concurrent jurisdiction in cases of this kind, but the position that breach of contract is the basis of the defence, and that it is available at law, only when the suretyship is mentioned in the note seems questionable. Though this position is approved by the courts of Maryland it is disapproved by almost all other jurisdictions. The courts of equity were the first to hold that time given was a defence, and at the start the decisions were based not on the ground that there had been a breach of implied contract, but on the principle that the payee's sole claim was to be paid fully, and that it would be unjust to allow him knowingly to prejudice the surety's remedies against the principal and afterwards also to collect the entire claim. *Nisbet v. Smith*, 2 Bro. C. C. 579 (1789). In 1800 the courts of law began to allow this defence. The subsequent party to a bill was held discharged when time was given a prior party. *English v. Darley*, 2 Bos. & Pul. 61. These early cases at law were also decided on strictly equitable grounds and without mentioning implied contract. *Gould v. Robson*, 8 East, 576 (1807). In 1817 Lord Eldon said that the same principles which discharge the surety in equity now discharge him at law. *Samuell v. Howarth*, 3 Mer. 272. In spite of this start, the courts of law during the next forty years in their desire to be governed by legal, not equitable reasoning, laid hold of certain suggestions in *Rees v. Berrington*, 2 Ves. Jr. 540 (1795), and finally

satisfied themselves that giving time raised strictly a legal defence, that it was a simple breach of contract. *Manley v. Boycott*, 2 E. & B. 46 (1853). The decisions and the doctrine of this period form the basis of the present rule in New Jersey and Maryland. *Yates v. Donaldson*, 5 Md. 389. In England, however, when the statute allowing equitable pleas at law took away the motive for searching out legal reasons for equitable defences, the courts speedily reverted to the original idea, and declared that the implied contract was pure fiction, that the defence was granted solely on the ground that it would be unjust for the creditor to take advantage of the surety's legal liability. *Pooley v. Harradine*, 7 E. & B. 431 (1857); *Greenough v. McClelland*, 2 E. & E. 424. This fact, and the fact that American courts almost unanimously have reached the same conclusion, give strong ground for believing the New Jersey position to be mistaken. This belief is made almost a certainty by a consideration of the long line of cases which, both in England and America, have held that although the creditor first learns of the suretyship relation after he has received the obligation, and therefore after the contract is complete, yet he can do nothing inconsistent with the surety's remedies without discharging him from liability. *Rouse v. Bradford Banking Co.* [1894], App. Cas. 586; *Colgrove v. Tallman*, 67 N. Y. 95. The defence then is equitable, and it would be theoretically correct to refuse to allow it in any case at law. But, as it is settled that it is admissible in one case, it seems illogical not to permit it in all.

CONTEMPT OF COURT. — The law concerning contempt of court is, from the nature of the offence, curiously vague and difficult to classify. A court has the power to punish summarily any person who interferes with its administration of the law. The power is absolute, not subject to review, limited only by the discretion of the court itself. The classification usually made of contempts in and contempts out of court seems of no value. Bishop, Criminal Law, 7th edit., Vol. II., § 261. All that can be done is to enumerate various instances of acts which are contempts and show in general with what functions of justice they interfere. The usual form of contempt is obstructing the administrative machinery of a court. A breach of good order in the court room is contempt because it hampers the court in the carrying on of its business; insulting a judge, adverse criticisms of decisions, inciting popular prejudice, *Reg. v. Skipworth*, 9 Q. B. D. 219, all are contempts as tending to bring the court into disrepute and to lessen its dignity and power; disobedience of an order of the court is an obvious offence against its administration of justice.

A different and less common class of contempts interferes with the work of the court in its strictly judicial functions; the ascertaining of law or fact. Tampering with witnesses or juries and the misconduct of juries or the court officers are serious impediments in the course of justice. A recent decision of the Supreme Court of Massachusetts, *The Telegram Newspaper Co. v. The Commonwealth*, *The Gazette Co. v. The Commonwealth*, October Sitting, 1898, manuscript, points out a new offence of a like nature. It appears that one Loring suffered by the taking of land by a town, and an unfortunate newspaper published that "the town offered Loring \$80 at the time of the taking, but he demanded \$250 and, not getting it, went to law." A like statement appeared in another paper. Both were promptly fined for contempt, and their appeal was dismissed. No